National Business Group on Health®

20 F Street, NW, Suite 200
Washington, DC 20001
202.558.3000 • Fax 202.628.9244
www.businessgrouphealth.org

Creative Health Benefits Solutions for Today, Strong Policy for Tomorrow

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-1717-P
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

September 27, 2019

Submitted electronically via: www.regulations.gov

Re: CMS-1717-P – Medicare Program: Proposed Changes to Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Price Transparency of Hospital Standard Charges; Proposed Revisions of Organ Procurement Organizations Conditions of Coverage; Proposed Prior Authorization Process and Requirements for Certain Covered Outpatient Department Services; Potential Changes to the Laboratory Date of Service Policy; Proposed Changes to Grandfathered Children's Hospitals-Within-Hospitals

Dear Administrator Verma:

The National Business Group on Health appreciates the opportunity to respond to the Centers for Medicare and Medicaid Services' (CMS's) notice of proposed rulemaking regarding the Medicare hospital outpatient prospective payment system (OPPS) and the Medicare ambulatory surgical center (ASC) payment system for CY 2020.

The Business Group represents 444 primarily large employers, including 74 of the Fortune 100, who voluntarily provide health benefits and other health programs to over 55 million American employees, retirees, and their families. Our members employ and provide health coverage under a wide variety of arrangements and often their group health offerings to the specific needs of their lines of business. This coverage generally is self-insured group health plan coverage or a combination of self-insured and insured coverage.

Given the opacity, dysfunction, and high costs prevalent in the current marketplace, we applaud CMS's efforts to take on the risk of disrupting existing business practices to facilitate both new private-sector strategies and better public oversight of the market. Public disclosures of price ***and*** quality data within health care settings should expose outliers, and possibly

abusive pricing practices, that are harming consumers, plan sponsors, and tax payers. Given the strain high costs are placing on employers and workers, the facilitation of new strategies to help bring costs under better control is shared goal.

For 2018, Business Group members estimate that health care costs on a per employee per year basis will be $11,730, approximately $2,572 of which will be borne by employees through premium contributions. These amounts do not include employees' out-of-pocket costs, which our members estimate at $2,378. Our members expect overall health care costs to increase by approximately 5% in 2019.[1]

To adequately navigate coverage, employees and their dependents need information, but that information is often not readily available. Thus, we strongly support efforts to bring meaningful cost and quality data to light, to help both public and private payers, as well as the patients we serve, continuously increase the demand of high quality, high value health services.

Therefore, within the scope of the proposed rule, we support CMS's efforts to:

- Improve the efficiency of healthcare markets and provide consumers with higher-value health care by encouraging choice and competition;
- Increase transparency in health care pricing to enable patients to have real-time access to price and quality data, to become more active consumers and lead the drive towards value;
- Reduce payment differences between certain outpatient sites of service so that patients can benefit from high-quality care at lower costs, and are able to receive care that is provided safely and is clinically appropriate;
- Further develop requirements for making public a consumer-friendly file online that includes meaningful prices for hospital items and services;
- Provide information that will assist developers with consumer-friendly price transparency tools, or who may integrate the data into electronic medical records and shared decision making tools at the point of care; and,
- Continuously refine processes and reduce burden within the Medicare program, as outlined in the proposed rule, including implementing appropriate prior authorization processes, reducing the provider paperwork burden, scrutinizing programs such as 340B, and improving the work stream of organ procurement organizations.

However, we also express the following concerns:

- While we support the Administration's effort to enable outside scrutiny of pricing across competing facilities and thus facilitate strategies in the private sector to lower overall costs of care, requirements for making private-payor negotiated charges available may not be the best source of pricing data for consumers.

[1] National Business Group on Health, *2019 Large Employers' Health Care Strategy and Plan Design Survey* 21 (2018).

- Moreover, publicly disclosing competitively negotiated, proprietary rates may reduce competition and push prices higher – not lower – for consumers, patients, and taxpayers.

Business Group suggests that in finalizing and implementing the proposed rules, CMS consider the following:

1. Price transparency at negotiated contract rates will not satisfy consumer demand for information related to true out-of-pocket expenses. Beneficiaries deserve answers to questions such as:

    - What will my true out-of-pocket costs be?
    - What are the overall costs to my plan?
    - Where can I get the best care for my money?
    - How do my care options compare against each other, and
    - Are there alternatives of equal quality that offer a better value?

2. How shoppable are health care services? Beneficiaries are limited in their ability to shop around for healthcare, depending on coverage options and open enrollment periods, among other factors. Once a health care plan is selected, the majority of decisions are driven by providers within the network. Therefore, transparency should be based on what is shoppable within the consumer's individual network.

3. How policies intended to bring procompetitive information to the public may have the unintended impact of inflating prices.

We provide further discussion of our recommendations below.

I. As the proposed rule is finalized, we urge CMS to consider the following concerns and challenges with increasing consumerism in health care and relative to disclosure of private-payor negotiated rates.

A. Standard Charges for Shoppable Services and Consumerism

Growing numbers of consumers have a strong incentive to shop for lower-cost treatments when doing so is possible—either because they are enrolled in a high-deductible health plan or because they work for employers that have created strong financial incentives for employees to seek higher value care and services.

However, prices are only meaningful and competitive when they are relevant to large numbers of consumers, and for services that are shoppable. Chargemaster rates are rarely used by direct-pay consumers, and beneficiaries are most concerned with knowing their true out-of-pocket costs. Thus, we encourage the Administration to consider whether disclosure of private-payor negotiated rates is the "right" rate for participants ***within a health plan***, but not public

consumption. Disclosure of rates for individual participants would like be a better way to strike the balance between price sensitivity and consumerism. Further, tools that would allow consumers to simultaneously compare both price and quality may more meaningfully drive consumption of higher value care. Additional transparency considerations to be considered:

- While average list prices can be used by payers to distinguish high-cost from low-cost providers for specific services, patients pay a combination of insurer-negotiated rates, deductibles, and copayments or coinsurance.
- There is a risk that fostering price-based competition may come at the expense of clinical quality. High prices for health care are frequently construed as a marker of high quality by many people, even though evidence shows health care quality is often not correlated with price.
- Consumer shopping for health care services may be influenced by many factors other than price, which includes but is not limited to, network coverage, provider recommendations, reference prices and other financial incentives.
- Health care services in general, but particularly hospital services, are less shoppable from a consumer standpoint.

Further, simply providing pricing information directly to consumers through price transparency tools may not change consumer behavior in a manner that result in higher-value care. Studies that have evaluated existing websites or applications for price searching have offered mixed conclusions about price transparency. While some find that these search tools led to lower prices, a majority have found that they were not used at high rates, did not meaningfully decrease spending, and need to be accompanied with greater quality transparency.

For price transparency to effectively drive consumerism and lower health care costs, corresponding quality and out-of-pocket-cost data are necessary to drive appropriate health care choices and improvements in the care provided. **Business Group urges the Administration to:**

1. **Maintain a focus on transparency efforts for products and services that are truly shoppable, such as some prescription drugs and diagnostic imaging.**
2. **Drive toward a transparency effort with an "all in" approach that will bundle health care products and services into units that consumers can clearly compare, such as episodes of care, procedures, or the annual cost of care.**
3. **Combine pricing data with data on quality, health outcomes, or comparative effectiveness data.**
4. **Present standardized data in the same format to allow consumers to compare estimated total out-of-pocket costs.**
5. **Require price information be made available to physicians and other providers that direct patient care but rarely know the prices or quality of the services they deliver.**
6. **Encourage more shared decision-making around treatment options where out-of-pocket costs are part of the provider-patient interaction.**

B. Potential inflationary impact

The Business Group has long supported efforts to standardize health care costs and quality. Thus, we applaud CMS's goal of revealing how widely costs vary in the U.S. for care. A magnetic-resonance image of the lower back costs $141 at an imaging center in Jefferson, La., but runs $47,646 at a hospital in Torrance, Calif., according to data from Clear Health Costs, a New York company that publishes information about health-care costs.[2] However, the proposed rule may actually lead to higher prices by eliminating existing discounts. Once public, it could be argued that higher rates in less competitive contracts would become the floor for negotiation.

1. Disclosure of negotiated commercial private-payor rates may negatively affect market dynamics. Hospitals with comparatively lower reimbursement rates may be likely to leverage that price information in negotiations with third-party payors for higher reimbursement rates. Such as certain physician office visits, prescription drugs, and some diagnostic services.

2. A 2015 **memo** from the Federal Trade Commission (FTC) that found a similar healthcare price transparency regulation in Minnesota to be anticompetitive. At the time, the Commission stated, "such disclosure may chill competition by facilitating or increasing the likelihood of unlawful collusion, and may also undermine the effectiveness of selective contracting by health plans, which serve to reduce healthcare costs and improve overall value in the delivery of health care services … This risk of such harm is especially great if this information is accessible to competing healthcare providers, and in highly concentrated markets where competition among providers is already limited."[3]

3. Value-based contracting structures, where ultimate third-party payment rates for hospital items or services may vary based on care furnished by other providers or patients enrolled in the same value-based plan may be harmed. Hospitals may utilize contracted service providers that separately bill for items and services in connection with a hospital service, and it is unclear how these costs would be reported.

The inflationary concern that public disclosure could result in a reduction of discounts and higher prices overall could be more severe in less competitive and rural hospital markets. Preserving the ability to secure lower prices for health care services, tailored to plan and beneficiary needs is dependent upon the confidentiality of proprietary rates. These negotiations take place in an effort to manage overall costs, using customized mixes of services

[2] "Hospitals May Be Forced to Disclose Discount Rates Negotiated with Insurers," Text.Article, Dow Jones Newswires, July 29, 2019, https://www.foxbusiness.com/healthcare/hospitals-may-be-forced-to-disclose-discount-rates-negotiated-with-insurers.

[3] The Federal Trade Commission, "Amendments to the Minnesota Government Data Practices Act Regarding Health Care Contract Data," June 29, 2015, https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-regarding-amendments-minnesota-government-data-practices-act-regarding-health-care/150702minnhealthcare.pdf.

depending on the geography and patient demands, and insulate insured consumers from the full cost of health care. **For a deflationary impact on health care costs, Business Group urges the Administration to refocus efforts on policies that would tell patients their actual out-of-pocket costs for truly shoppable services.**

Thank you for considering our comments and recommendations. We would be happy to provide additional details and work with CMS in the rulemaking process. Please contact me or Steven Wojcik, the National Business Group on Health's Vice President of Public Policy, at (202) 558-3012, if you would like to discuss our comments in more detail or if we can provide additional information as the department continues its evaluation of drug pricing.

Sincerely,

Brian Marcotte
President